

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN

AND

THE HON'BLE SRI JUSTICE C.V.BHASKAR REDDY

WRIT APPEAL No.312 of 2022

JUDGMENT: *(Per the Hon'ble the Chief Justice Ujjal Bhuyan)*

Heard Mr. J.Prabhakar, learned Senior Counsel representing Ms. D.Venkata Padmaja, learned counsel for the appellants; Ms. B.Kavitha Yadav, learned counsel for respondent No.1-Union of India; and Mr. Srikanth Surat, learned counsel for respondent Nos.2 & 3.

2. Appellants before us are M/s. National Small Industries Corporation Ltd. and M/s. Maave Electronics Private Limited.

3. This intra-court appeal has been preferred against the order dated 14.09.2021 passed by the learned Single Judge disposing of Writ Petition No.31012 of 2018 filed by appellants and respondent No.4 as petitioners.

4. Grievance expressed in the writ petition was that respondent Nos.2 & 3 had encashed the bank guarantee contrary to the terms of the agreement dated 22.04.2015 entered into between the writ petitioners and respondent Nos.2 & 3 herein. Further prayer made was for a direction to respondent Nos.2 & 3 to remit the amount invoked under the bank guarantee together with interest at the rate of 18% per annum.

5. At the time of hearing, it was contended on behalf of the writ petitioners that there was an agreement between the contesting parties and without complying with the terms of the agreement, respondent Nos.2 & 3 had encashed the bank guarantee, that too prematurely.

6. Argument of learned counsel appearing for the writ petitioners was that in the agreement dated 21.02.2015, there is an arbitration clause being Clause 10. Without availing the remedy of arbitration as provided under the agreement, respondent Nos.2 & 3 had straightaway invoked the bank guarantee. Therefore, prayer was made that

appropriate orders be passed directing respondent Nos.2 & 3 to refer the dispute to an arbitrator in terms of Clause 10 of the agreement dated 21.02.2015 read with Clause 17.2.7 of the Invitation for Bids dated 29.01.2015; the encashed bank guarantee would be subject to outcome of the arbitration.

7. It was in the above context that learned Single Judge had passed the following order on 14.09.2021:

“This Court, having considered the rival submissions made by the learned counsel for respective parties, is of the considered view that this writ petition can be disposed of directing respondents 2 and 3 to refer the dispute raised by the petitioners to an arbitrator in terms of Clause-10 of agreement dated 21.02.2015 and Clause 17.2.7 of Invitation for Bids (IFB) dated 29.01.2015 and let the Arbitrator adjudicate the dispute and pass appropriate orders in accordance with law. Both the parties shall abide by the outcome of the adjudication made by the arbitrator. It is needless to state that both the parties are entitled to raise all the disputes before the Arbitrator.”

8. In the hearing today, Mr. J.Prabhakar, learned Senior Counsel submits that he wants a slight modification in the above order to the extent that in addition to the

arbitration, appellants should be given the liberty to avail the remedy under the Micro, Small and Medium Enterprises Development Act, 2006.

9. We are unable to agree with the contention advanced by learned Senior Counsel for the appellants. The order dated 14.09.2021 as extracted supra was passed on the basis of the contentions advanced by the rival parties at the time of hearing. Though under the Micro, Small and Medium Enterprises Development Act, 2006, there is provision for making reference to the Facilitation Council under Section 18 for mediation and arbitration, the said remedy was not availed of by the appellants at the first instance.

10. On the other hand, learned counsel for respondent Nos.2 & 3 has informed us that following the order of the learned Single Judge, arbitration proceedings have been initiated by appointment of arbitration.

11. We therefore do not find any good reason to entertain this appeal.

12. Writ Appeal is accordingly dismissed with costs of Rs.10,000.00 (Rupees ten thousand only).

13. As a sequel, miscellaneous applications pending, if any, in this Writ Appeal, shall stand closed.

UJJAL BHUYAN, CJ

C.V.BHASKAR REDDY, J

Date: 22.08.2022
KL